

FILED

APR - 4 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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11 **Attorney for Plaintiff DAVID J. LEE**

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 **DAVID J. LEE, an individual and, on**
15 **behalf of others similarly situated,**

16 **Plaintiff,**

17 **vs.**

18 **CAPITAL ONE BANK and CAPITAL**
19 **ONE SERVICES, INC., Virginia**
20 **corporations, DOES 1 through 100,**
21 **inclusive,**

22 **Defendants.**

) **Case No.: C-07-4599 - MHP**

) **NOTICE OF APPEAL TO THE**
) **UNITED STATES COURT OF**
) **APPEAL FOR THE NINTH**
) **CIRCUIT**

) **[REPRESENTATION STATEMENT,**
) **AND CIVIL APPEALS DOCKETING**
) **STATEMENT, AND NOTICE OF INTENT**
) **TO DESIGNATE PORTIONS OF COURT**
) **TRANSCRIPT AND STATEMENT OF**
) **ISSUES, FILED CONCURRENTLY]**

1 DAVID J. LEE the Plaintiff/Appellant herein, appeals to the United States Court of
2 Appeals for the Ninth Circuit from the final judgment of the District Court, entered in this case
3 on March 5, 2008 (Docketed as No. 43 on March 5, 2008) granting the Defendants' motion to
4 dismiss the Plaintiff's complaint.

5 There is a related case in connection with this appeal. That case is David J. Lee, and
6 Daniel R. Lloyd vs. American Express Travel Related Services, Inc., American Express
7 Centurion Bank, and American Express Bank, FSB, Case No. C-07-4765 (CRB) (N.D. Cal.
8 December 6, 2007), Court of Appeals Record No. 08-15015.

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10 Dated: April 2, 2008

Respectfully submitted,

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13 Matthew S. Hale, Counsel
14 For Plaintiff/Appellant
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PROOF OF SERVICE

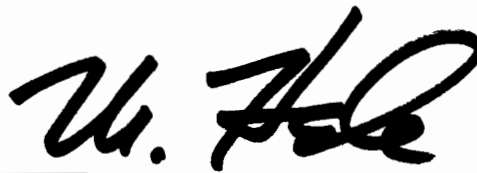
I am employed in the City of Newport News, Virginia. I am over the age of eighteen (18) and not a party to the within action; my business address is P.O. Box 1951, Newport News, VA 23601.

On Wednesday, April 2, 2008, I caused to be served by Federal Express overnight courier the foregoing documents: (1) Notice of Appeal to the United States Court of Appeal for the Ninth Circuit, (2) Representation Statement, (3) Civil Appeals Docketing Statement, and (4) Notice of Intent to Designate Portions of Court Transcript and Statement of Issues.

The foregoing documents were served on:

**Mr. James McGuire
Morrison & Foerster, L.L.P.
425 Market Street
San Francisco, CA 94105
Phone: (415) 268-7013**

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on the 2nd day of April 2008 in Newport News, Virginia.

A handwritten signature in black ink, appearing to read "M. Hale", written over a horizontal line.

Matthew S. Hale, Esq.

DUPLICATE

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611017030
Cashier ID: almaceh
Transaction Date: 04/04/2008
Payer Name: matthew s. hale

NOTICE OF APPEAL/DOCKETING FEE

For: D LEE
Case/Party: D-CAN-3-07-CV-004599-001
Amount: \$455.00

CHECK

Check/Money Order Num: 3401561
Amt Tendered: \$455.00

Total Due: \$455.00
Total Tendered: \$455.00
Change Amt: \$0.00

MHP

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.